

**Central Administrative Tribunal
Principal Bench**

OA No. 494/2016

Order reserved on: 18.05.2016
Order pronounced on: 31.05.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Hemant Kumar Sharma
Son of Sh. Ravinder Kumar Sharma
Aged about 45 years,
Craft Instructor (Plumber)
Lala Hans Raj Gupta Industrial Training Institute,
DSIDC, Industrial Complex Area,
Narela, Delhi-110040
Resident of House no.3/9, Arya Bhatt Enclave,
Ashok Vihar, Phase-3,
Delhi-110052.

- Applicant

(By Advocate: Sh. Praveen Chaturvedi)

Versus

1. Govt. of NCT of Delhi
Through its Principal Secretary,
Delhi Secretariat,
IP Extension, New Delhi.
2. Department of Training & Technical Education
Through its Secretary,
Muni Maya Ram Marg,
Pitampura,
Delhi-110088.
3. Govt. of NCT of Delhi
Through its Director
Lala Hans Raj Gupta Industrial Training Institute,
DSIDS, Industrial Complex Area,
Narela,
Delhi-110040.

- Respondents

(By Advocate: Sh. Amit Anand)

ORDER

The present OA has been filed by the applicant with a prayer to quash the order dated 28.01.2016 passed by respondent no.2 transferring him to ITI, Jaffarpur (ITIJ).

2. The applicant is a Craft Instructor (CI) (Plumber) working at ITI Narela (ITIN), who has been transferred by the impugned order to ITIJ with immediate effect. According to the learned counsel for the applicant this order has been passed by the respondents out of malice and as a punishment. The applicant has been performing his duties at the Institute for more than 20 years to the satisfaction of the respondents and the students. But the controversy started when the Vice Principal of the Institute issued an office order on 14.08.2015 directing the applicant to look after all practical and theory classes of two units in plumber trade. The applicant vide letter dated 14.08.2015 represented that such direction was against the norms and practically not possible to implement. In the interest of the students the authorities should make proper arrangements for conducting classes for the second batch well in advance. Unhappy with the submissions of the applicant the Principal of the Institute issued a memorandum on 17.08.2015 giving him three days to reply. The applicant on 20.08.2015 submitted his reply again explaining the factual position. According to the applicant the respondents out of

personal malice had again issued a show cause notice on 08.10.2015 asking him to explain as to why action under CCS (CCA) Rules, 1965 should not be initiated against him. According to him it is in this background that the respondents have transferred the applicant to ITIJ on 28.01.2016.

3. Learned counsel for the applicant submitted that this transfer order was against the existing the norms and rules of the Department. The Training Manual for Industrial Training Institutes (Annexure-2) prescribes that for each vocation there should be two Instructors for one unit. Once the applicant is transferred out, no Instructor will be left in ITIN while there is one Instructor already working at ITIJ. Further the memorandum on transfer policy notified by the respondents on 23.05.2014 lays down detailed guidelines for effecting transfer/ posting of the employees working in ITIs etc. One of the factors to be kept in view is that the distance from working place to the residence should not be more than 20-25 kms one side. In the case of the applicant the place where he has been transferred is 55 kms from the place of his residence. As an example, the learned counsel referred to the office order dated 16.05.2016 whereby 23 CI/CCI have been transferred and the transfer order itself shows that in none of the cases (except the one where the official resides at Sonepat outside Delhi), the distance between the places of new and old posting from residence is not more than 26 km. It was

further argued by quoting from the Prospectus-2015 for various courses in ITIs of Delhi Government that normally the strength of one unit for vocational training is 26. There were two units of 26 each at ITIN but only one unit at ITIJ. Therefore, there was no justification for transferring an Instructor from ITIN to ITIJ. The same Prospectus also shows that the expected output from an Instructor is to attend to 28 hours per week of practical instructions and 10 hours per week of theoretical instructions. It would be, therefore, impossible for one Instructor to attend to two units with the aforesaid output for each unit within a week. Learned counsel, therefore, prayed for quashing of the transfer order.

4. Learned counsel for the respondents, on the other hand, vehemently denied the allegation of any malafide or punishment involved in the impugned transfer order. It was submitted that the conduct of the applicant in the Institute was threatening the congenial atmosphere among the staff. He referred to the language used in his reply to the office order dated 14.08.2015 in which he had made baseless allegations and used intemperate language. The applicant had complained that the entrustment of second unit to him was against the service rules and imposed on him intentionally. It was an example of misuse of the powers of the high officials with malafide intentions. The authorities should before introducing any trade or unit, equip the department in all

manners. If his demand was not accepted he would have no option but to go and meet the Secretary, Directorate of Training and Technical Education.

5. Learned counsel submitted that the applicant had over-reacted to the work entrusted to him. It was a temporary arrangement made to tide over the shortage of staff. The order itself stated that the CI/CCI were to look after the enhanced unit till new Instructors were posted and this order was not only issued to the applicant but 4 other CCI's were also asked to look after additional units. The respondents have not received any complaint from other staff. Even in the reply to the memorandum given to the applicant, the applicant has been making irrelevant submissions and vague allegations besides using terms like Talibani orders in respect of the legitimate orders passed by the respondents. In such a situation the respondents had no option but to transfer him to another location in the interest of maintaining harmony in the institution and in the interest of the studies of the students. The learned counsel also relied on **Sujata Kohli vs. High Court of Delhi**, 148 (2008) DLT 17 (DB).

6. We have heard the learned counsels and perused the record. The main argument of the applicant is that the impugned transfer order is against the existing policy of the respondents and by way of punishment. The transfer policy notified in the year 2014

mentions distance to be one of the criteria to be kept in view while taking a decision with regard to the transfer/posting to "ex cadre staff" working in ITIs/BTC/Dy. App. Advisor's office under the Directorate of Training and Technical Education. It has not been brought out either by the applicant or by the respondents whether the applicant is an ex cadre staff. However, since there is no rebuttal of the submissions of the applicant regarding the applicability of the policy, we take it that the policy is applicable to the applicant. Para 4 of the policy reads as under:

"4. Distance:-

While making transfers of the officials working in ITI/BTC/DAA office, it will be taken into consideration that the distance from working place and residence should not be more than 20-25 kms one side. However, department may identify the Craft Instructors of Non-functional trades and transfer them to the it is where trades are functional to meet the requirement of shortage of staff without considering the travel distance criteria."

7. It is, therefore, incumbent on the part of the authorities to ensure that the distance from working place to residence should not be more than 20-25 kms one side. The applicant has produced an order dated 16.05.2016 that shows that the respondents do observe this norm by and large. In the case of the applicant he claims that ITIJ is 55 kms from his residence and the same has not been contradicted by the respondents. In such a case the impugned transfer order does not meet the criteria of the respondents as laid down in the policy dated 23.05.2014. While the respondents have referred to the un-Parliamentary

language used in his representations against the transfer order and show cause notice etc., it has not been the case of the respondents that this transfer order is by way of punishment. The respondents have claimed that the applicant was transferred out only with a view to maintain a congenial and harmonious environment in the Institute in the larger interest of the students. The arrogance of the applicant, respondents have claimed, is reflected by the fact that he has not even bothered to reply to the show cause notice given to him on 08.10.2015.

8. To contradict the assertion of the applicant that he has served ITIN with all sincerity with the last more than 20 years, respondents have placed on record a letter dated 15.02.2016 sent by the Principal of the Institute which reflects that the applicant has been penalised for unauthorised absence, given adverse ACRs, SCN for submission of records, obstructing office work and indulging in provocative acts during the period 1996 to 2013 and the latest one is his refusal to report at ITIJ in compliance of the impugned transfer order. We agree with the respondents that from the facts placed on record, it is apparent that the record of the applicant projects him as an indisciplined employee who has not been pulling on well with the authorities at the ITIN for a long time. However, if we accept the contention of the respondents that the applicant has been transferred only with the intention of

maintaining a congenial environment at the ITIN and it is not a punitive transfer, in that case it is expected that the respondents would abide by the considerations mandated in their own transfer policy. While the respondents would be within their rights to take appropriate action for any act of indiscipline or misconduct on the part of the applicant in accordance with the rules and award punishment if found guilty, a normal transfer keeping in view administrative exigencies is expected to be in conformity with the notified transfer policy.

9. At the same time a transfer order, which may not conform to the transfer policy but has been issued by the competent authority to meet the administrative exigency, cannot be disobeyed by the applicant on this ground. It also cannot be quashed on this ground alone as administrative exigencies could justify exceptions to the general policy. The applicant had first refused to obey the legitimate orders given to him to attend to the enhanced unit as a temporary measure till the new Instructor was posted, and later he refused to join at the new location of his posting in new organisation. An employee cannot expect to work always under ideal conditions. There would be situations where the larger interest of the organisation has to be balanced with the comfort and convenience of the employees. If the respondents have decided to start a new unit in the interest and training more students in the trade of plumber, the applicant cannot put a

condition of his own for taking up additional work assigned to him. Very often an organisation has to deliver results under sub-optimal conditions.

10. Learned counsel for the respondents referred to the judgment of Hon'ble Delhi High Court in **Sujata Kohli** (supra) wherein the court observed thus:

“31. Having considered the facts of the present case in the aforesaid context, we find that because of some unpleasant encounters with certain members of the Bar, she has developed the feeling that for no fault of hers, she is wronged. However, it seems that the Inspecting Judge, on objective consideration of the entire situation, did not find so. No doubt, on the one hand the petitioner had sent the complaint of the alleged episode to the High Court against the conduct of certain lawyers and office bearers of the Bar Association. On the other hand, the Members of the Bar had, similarly, made complaint against the conduct of the petitioner. In the first instance, the Inspecting Judge examined the same and heard the views of both sides. It further seems that the main reason for giving audience to the petitioner by the Inspecting Judge was also to counsel her as to the events clearly disclosed that it was not a Go-Happy situation between the petitioner and the Bar. This is the duty of the Inspecting Judge and with this honest and bona fide intentions, the petitioner was summoned by him, it is not proper on the part of the petitioner to level such allegations as are raised in this petition. The petitioner may have her own strong views about her exemplary conduct in the Court and grievance against the Bar. However, when the Inspecting Judge examined the case keeping in view the position of either side and wanted to counsel the petitioner to diffuse the tension, that was required to be taken in a right spirit. We do not know, but are confident, that the Members of the Bar would also have been counselled likewise.”

11. In this context it is relevant to quote Hon'ble Supreme Court's observations in **S.C. Saxena v. Union of India and others**, 2006 (9) SCC 583:

“In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.”

12. Considering the foregoing discussion, we do not find any merit in the prayer of the applicant to quash the impugned order dated 28.01.2016. The applicant may, if he so wishes after joining at ITIJ, submit a fresh representation against the transfer order to the respondents through proper channel mentioning all his grounds, and on receiving such representation the respondents shall consider the same in accordance with law, and pass appropriate orders within a period of four weeks from the date of receipt of such representation. OA is disposed of with the above directions. No costs.

(V.N. Gaur)
Member (A)

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